

1 RAINES FELDMAN LLP  
2 MILES FELDMAN (BAR NO. 173373)  
3 RANDAL IVOR-SMITH (BAR NO. 222100)  
9720 Wilshire Boulevard, Fifth Floor  
3 Beverly Hills, California 90212  
4 Telephone: (310) 440-4100  
Facsimile: (310) 765-7730  
5 Attorneys for Plaintiff, Counter-Defendant and  
Cross-Complainant NACABI TRADING, INC.

6 LATHROP & GAGE LLP  
7 JOHN SHAEFFER (BAR NO. 138331)  
8 AMBER D. HENRY (BAR NO. 247624)  
BRIAN C. FRIES (admitted *pro hac vice*)  
1888 Century Park East, Suite 1000  
Los Angeles, CA 90067  
Telephone: (310) 789-4600  
Facsimile: (310) 789-4601  
10 Attorneys for Defendant and Counter-Claimant  
IMPACT DESIGN, LLC  
11

12 COREY & COREY  
EDWARD E. COREY (BAR NO. 124900)  
13 3580 Wilshire Boulevard, 17<sup>th</sup> Floor  
Los Angeles, CA 90010  
14 Telephone: (213) 385-7003  
Facsimile: (213) 385-6908  
15 Attorneys for Cross-Defendant PG-USA, Inc.

16 UNITED STATES DISTRICT COURT  
17 CENTRAL DISTRICT OF CALIFORNIA

18 NACABI TRADING, INC., a Nevada  
corporation,

19 Plaintiff,

20 v.

21 IMPACT DESIGN, LLC a Kansas  
22 limited liability company; and DOES 1  
through 10, inclusive,

23 Defendants.

24 Case No. CV10-3275 R (VBKx)

25 STIPULATION AND PROTECTIVE  
26 ORDER

27  
28 AND RELATED COUNTER AND  
CROSS-CLAIMS

1 Pursuant to the Federal Rules of Civil Procedure and it appearing that  
2 discovery in the above-entitled action is likely to involve the disclosure of  
3 confidential information, IT IS HEREBY STIPULATED AND AGREED by and  
4 between the parties hereto, by and through their counsel of record, as follows:

5 1. In order that confidential financial, technical, developmental,  
6 commercial, and proprietary information and trade secrets are protected pursuant to  
7 the Federal Rules of Civil Procedure, this Protective Order will govern any  
8 document, material, item, testimony, or thing filed with or presented to the Court or  
9 produced, served, or generated during the discovery process which contains or  
10 comprises any confidential financial, technical, developmental, commercial, or  
11 proprietary information or trade secrets.

12 2. "Confidential" information shall consist of confidential technical,  
13 research, developmental, commercial, business, employment, financial, or other  
14 proprietary information which is nonpublic or is restricted from disclosure by  
15 obligations with a non-party (such as a customer) and which the designating party  
16 reasonably believes is of such a particularly sensitive nature and character that the  
17 unlimited disclosure thereof to others would be harmful to the designating party or  
18 its business, to a non-party (such as a customer) or its business, or would provide the  
19 receiving party with a competitive advantage over the designating party. Any  
20 information derived from Confidential information also constitutes Confidential  
21 information to the extent the derived information embodies, contains, or discloses  
22 any Confidential information.

23 3. Nothing shall be regarded as Confidential information that: (a) is in the  
24 public domain at the time of disclosure; (b) becomes part of the public domain,  
25 through no act, fault, or failure of the receiving party; (c) is already lawfully in the  
26 receiving party's possession at the time of disclosure through no act, fault, or failure  
27 of the disclosing party; (d) is received at a later date by the receiving party from a  
28 third party who has the right to make such a disclosure; or (e) is independently

1 developed by the receiving party by persons without access to such Confidential  
2 information.

3       4. Any party may declare that any paper, document, record, pleading,  
4 response to discovery, deposition testimony, or other material contains information  
5 belonging to it or a non-party which contains information which is Confidential  
6 information. Non-parties who have been subpoenaed to testify or produce  
7 documents may likewise declare that any deposition testimony or document or thing  
8 produced contains information which is Confidential information, and such non-  
9 parties shall have the same rights and obligations with respect to such information as  
10 the parties hereto.

11       5. All Confidential information produced or revealed by the parties or  
12 non-parties in the course of this litigation shall be used solely for the purpose of this  
13 litigation, and for no other purpose, and shall not be disclosed to any person except  
14 in accordance with the terms of this Protective Order.

15       6. Access to Confidential information shall be limited to those individuals  
16 identified in the following paragraph 7 and the Court, the jury and alternate jurors  
17 empanelled by the Court in this action, employees of the Court, Court reporters who  
18 transcribe depositions in this case, and videographers who videotape depositions in  
19 this case.

20       7. Access to the Confidential information of designating parties, or  
21 compilations, extracts, or summaries of such Confidential information is limited to  
22 (a) the outside attorneys of record in this case; (b) persons employed in secretarial,  
23 clerical, or paralegal capacities in the offices of outside attorneys of record who are  
24 assisting such outside attorneys of record; (c) outside vendors providing  
25 photocopying, scanning, stenography, videography, and graphics assistance to  
26 attorneys of record who agree to be bound by the terms of this Order, and not  
27 including any mock jury or jury consultants; (d) “Qualified Experts” (as defined  
28 below) retained to assist in this litigation; (e) secretarial or clerical employees of

1 Qualified Experts who are assisting Qualified Experts in this action who agree to be  
2 bound by the terms of this Order, (f) authors, creators and previous recipients of  
3 Confidential information, and (g) parties to this lawsuit.

4       8. Persons having access to Confidential information identified in  
5 paragraphs 7(d) and 7(g) shall be shown a copy of this Protective Order and must  
6 review and sign an “Acknowledgment,” in substantially the same form as Exhibit  
7 “A” attached hereto stating that they agree to be bound by its terms prior to any  
8 disclosure of such information. The party utilizing such persons must maintain a  
9 copy of the signed Acknowledgment and provide a copy to counsel for the other  
10 parties to this litigation within thirty (30) days of termination of this litigation in its  
11 entirety.

12       9. Any outside (i.e., non-employee) expert witness or consultant of a party  
13 may become a Qualified Expert if that expert witness or consultant executes the  
14 “Acknowledgment” in the form attached hereto as Exhibit “A.”

15       10. Each party’s respective outside attorneys of record shall retain the  
16 original of each Acknowledgment executed by their Qualified Experts and client.

17       11. Qualified Experts and parties to this lawsuit shall be responsible for  
18 their employees’ compliance with this Protective Order.

19       12. Documents, things, and deposition transcripts, and copies, extracts, or  
20 summaries thereof, containing Confidential information shall be clearly marked as  
21 “Confidential” or with a similar legend.

22       13. During any deposition, a party may designate testimony as Confidential  
23 information by stating on the record at the deposition that the testimony is  
24 Confidential information and is subject to the provisions of this Protective Order.  
25 The court reporter shall separately bind such portion and mark the transcript with an  
26 appropriate legend.

27       14. A party whose Confidential information will be discussed during a  
28 deposition has the right to exclude from the deposition room any persons who are

1 not Qualified Experts, parties to this lawsuit and/or an attorney of record, but only  
2 during such time as Confidential information is being discussed.

3       15. A party may also designate information disclosed at a deposition taken  
4 after the date of entry of the Protective Order as Confidential information by  
5 notifying the other parties, in writing, within twenty (20) days of receipt of the  
6 transcript, of the specific pages and lines of the transcript which should be treated as  
7 Confidential information thereafter. Each party shall attach a copy of such written  
8 notice or notices to the face of each and every copy of the transcript, and any  
9 extracts or summaries thereof, in its possession, custody or control. All deposition  
10 transcripts shall be treated as Confidential information for a period of twenty (20)  
11 days after receipt of the transcript in order to allow the confidentiality thereof to be  
12 assessed.

13       16. All materials containing Confidential information, when filed with the  
14 Court, shall be filed in a sealed envelope, marked "Sealed Pursuant to Protective  
15 Order," and shall not be made public except by order of the Court.

16       17. The designation by a party or non-party of an item as containing  
17 Confidential information may be challenged at any time by another party. The  
18 challenging party shall identify each item challenged by letter to the designating  
19 party and shall state the basis or bases for asserting that the confidentiality  
20 designation is improper. The designating party shall respond in writing within ten  
21 (10) business days of its receipt of such challenge, unless the parties stipulate in  
22 writing to extend this period. If a dispute regarding a confidentiality designation  
23 cannot be resolved by the parties within fourteen (14) business days after the non-  
24 designating party's receipt of the designating party's response to its challenge, the  
25 challenging party must file a motion with the Court in order to change the  
26 confidentiality designation. The designating party shall bear the burden of proving  
27 the confidentiality classification is proper.

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1       18. All documents, materials, items, things, transcripts, or information  
2 designated under this Protective Order shall be kept in such a manner as to ensure  
3 that access thereto is limited to the persons properly having access thereto under the  
4 terms of this Protective Order.

5       19. Any item, document, or information inadvertently furnished by a party  
6 or a third person during the course of this litigation without a designation of  
7 confidentiality may nevertheless subsequently be designated as Confidential  
8 information under the terms of this Protective Order but only if counsel for the non-  
9 designating party (a) receives written notice from the designating party or third  
10 person of the inadvertent failure to designate and the request to thereafter treat such  
11 item, document, or information as Confidential information and (b) has a reasonable  
12 opportunity to advise others to whom such item, document, or information already  
13 has been disclosed that such item, document, or information should be treated as  
14 Confidential information.

15       20. If information subject to a claim of attorney-client privilege, attorney  
16 work product, or any other legal privilege protecting information from discovery is  
17 inadvertently produced to a party or parties, such production shall in no way  
18 prejudice or otherwise constitute a waiver of, or estops as to, any claim of  
19 privilege, work product, or other ground for withholding production to which the  
20 producing party or other producing person would otherwise be entitled. If a claim  
21 of inadvertent production is made pursuant to this paragraph with respect to  
22 information then in the custody of another party or parties, such party or parties  
23 promptly shall return to the claiming party or person that material and all copies or  
24 reproductions thereof as to which the claim of inadvertent production has been  
25 made, shall destroy all notes or other work product reflecting the contents of such  
26 material, and shall delete such material from any litigation support or other database.  
27 The party returning such material may then move this Court for an order compelling  
28 production of the material, but such motion shall not rely upon in any manner or

1 assert as a ground for entering such an order the fact or circumstances of the  
2 inadvertent production.

3       21. If, during the course of any Court hearing or trial, a party refers to or  
4 seeks to introduce a document, material, item, thing, transcript, or information  
5 which has been designated as Confidential information, the party shall inform the  
6 Court and shall request that attendance at such hearing or trial during the time such  
7 document, material, item, thing, transcript, or information is being discussed or  
8 utilized be limited to those Qualified Experts and parties entitled to have access to  
9 the designated material under the terms of this Protective Order.

10       22. Nothing in this Protective Order shall limit any party or any other  
11 person in the use of its, his or her own documents, things, and/or information for any  
12 purpose or from disclosing its, his, or her own confidential information to any other  
13 person.

14       23. Unless the parties otherwise stipulate, evidence of the existence or  
15 nonexistence of a designation under this Protective Order shall not be admissible for  
16 any purpose.

17       24. The terms of this Protective Order shall survive the termination of this  
18 litigation.

19       25. Within thirty (30) days of termination of this litigation in its entirety,  
20 including appeals (if any), all copies of Confidential information, and abstracts,  
21 summaries, excerpts or compilations thereof, including litigation databases or  
22 portions of databases containing either the full text of the Confidential information  
23 or abstracts, summaries, excerpts, or compilations thereof, shall, at the election of  
24 the designating party or third person, either be (i) destroyed with certification of  
25 such destruction provided to counsel for the designating party or (ii) returned to  
26 counsel for the party or non-party which produced such Confidential information,  
27 except that attorneys of record may keep (a) one copy of a complete set of  
28 pleadings, depositions transcripts, exhibits, and trial exhibits entered into evidence

1 and (b) copies of work product. Original documents and deposition transcripts shall  
2 not be destroyed. The Court shall retain jurisdiction over this Protective Order,  
3 adjudicating claims of breach, and administering damages and other remedies.

4 26. Nothing in this Protective Order shall bar the attorneys of record with  
5 access to Confidential information, from rendering advice to his, her, or their client  
6 with respect to this litigation and, in the course thereof, relying upon any  
7 Confidential information, provided counsel does not disclose any Confidential  
8 information in a manner not specifically authorized under this Protective Order.

9 **IT IS SO STIPULATED**

10 Dated: December\_\_\_\_, 2010

RAINES FELDMAN LLP

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By: \_\_\_\_\_

13 Attorneys for Plaintiff, Counter-  
14 Defendant and Cross-Complainant  
15 NACABI TRADING, INC.

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15 Dated: December\_\_\_\_, 2010

LATHROP & GAGE LLP

By: \_\_\_\_\_

16 Attorneys for Defendant and Counter-  
17 Claimant IMPACT DESIGN, LLC

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16 IT IS SO ORDERED

17 DATED: Jan. 5, 2011

**ORDER**



HONORABLE JUDGE OF THE  
DISTRICT COURT

**EXHIBIT A**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

NACABI TRADING, INC., a Nevada corporation,

Case No. CV10-3275 R (VBKx)

## ACKNOWLEDGMENT

Plaintiff,

V.

IMPACT DESIGN, LLC a Kansas limited liability company; and DOES 1 through 10, inclusive,

## Defendants.

## AND RELATED COUNTER AND CROSS-CLAIMS

This is to certify that I have read the Protective Order entered in the above-mentioned matter and agree (a) to be bound by the terms and conditions listed therein; (b) to be subject to the jurisdiction of the Court and any sanctions imposed by the Court in the event the Court determines I have violated the Protective Order.

Dated:

## Signature

Printed Name